

## **APPENDIX A TO PART 619**

### **BASIC AGREEMENT BETWEEN THE MILITARY TRAFFIC MANAGEMENT COMMAND AND MOTOR COMMON CARRIERS FOR APPROVAL TO TRANSPORT GENERAL COMMODITIES FOR THE DEPARTMENT OF DEFENSE**

1. The undersigned, who is duly authorized and empowered to act on behalf of \_\_\_\_\_ (Name of Company, Typed or Legibly Printed), (hereinafter called the carrier), as a prerequisite for approval to transport general commodities for the account of the Department of Defense (DOD) and the Military Traffic Management Command (MTMC), (hereinafter called the Government), agree to comply with all additional requirements, terms and conditions as set forth in this Agreement. This Agreement governs the transportation of all DOD general commodity freight administered by MTMC, except used household goods. Noncompliance by the carrier with any provision of this Agreement may result in MTMC taking action against the carrier under the Carrier Performance Program governed by MTMC Regulation 15-1, and revoking approval to participate in this traffic. If the carrier's approval is revoked, the carrier may be disqualified from further participation in any DOD freight traffic.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include equipment, personnel, facilities, and finances to handle traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The carrier further understands that it is not authorized to submit tenders for shipments requiring a Transportation Protective Service (TPS) until it has served DOD in an approved status for 12 continuous months. Prior to being allowed to handle shipments which require a TPS or Class A and B explosives, the carrier must first meet any additional requirements in effect at the time.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The carrier certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC General Freight Board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Carrier agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations governing the safe, proper, and lawful operation of motor vehicles, to include Title 49 Code of Federal Regulations (CFR) 386-397. Intrastate carriers are required to comply with all applicable state or federal regulations, whichever are more stringent.

b. No fines, charges, or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority. Carrier agrees to maintain valid motor common carrier operating certificates for its scope of operations. Any carrier found to be involved in brokerage, as defined by the Interstate Commerce Commission (ICC), of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in title 49 of the Code of Federal Regulations (CFR) 5387.9. Carrier agrees to ensure that the ICC is provided proof of their public liability insurance, in the form of a BMC 91 or 91-X, or MCS 90, in accordance with sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier agrees to provide MTMC with a certificate of insurance form. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041-5050, ATTN: MTOP-QQ, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate. The insurance underwriter must have a policy holder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of surety companies. Public liability insurance Interstate Carriers.

(1) The carrier agrees to also file with MTMC proof of: \$750,000 per vehicle for property, excluding hazardous, and \$1,000,000 per vehicle for oil, hazardous wastes, hazardous materials and hazardous substances defined in 49 CFR 5171.8 and listed in 49 CFR 5172.101.

(2) Public liability insurance Intrastate Carriers—Public Liability Insurance shall be that as required by the state, except that for deregulated states, public liability shall be the same as that required of interstate carriers.

(3) Cargo insurance. Cargo insurance in the minimum of \$150,000 for loss and damage of government freight per vehicle and/or \$20,000 per vehicle transported (e.g., automobile transporters or vehicles in haulaway service) must be maintained. Perishable carriers will maintain, as a minimum, cargo insurance in the amount of \$80,000 and bulk petroleum carriers will maintain \$25,000.

b. The insurance, carried in the name of the carrier, will be in force at all times while this agreement is in effect or until such time as the carrier cancels all tenders. The carrier agrees to ensure that the policies include a provision requiring the insurer notify MTMC, ATTN: MTOP-QQ, prior to any changes, renewals, and cancellation notices. This requirement applies to both interstate and intrastate carriers. Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

#### 6. Performance Bond.

a. Carrier agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the carrier obligation to deliver DOD freight to destination. It will cover DOD re-procurement costs as a result of carrier default, abandoned shipments, or bankruptcy. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The bond must be completed on the form provided by MTMC. The bond will be continuous until canceled. MTMC will be notified in writing, 30 days in advance of any change or cancellation. A letter of intent, by the surety company, is required with the initial application package. Upon MTMC approval, the carrier agrees to submit the Performance Bond before the Tender of Service will be accepted.

b. The sum of the bond will be determined as follows: (1) Carriers having done business in their own name with DOD for 3 years or more will be required to submit a Performance Bond in the amount of 2.5 percent of their total DOD revenue, taken from the Freight Information Systems Report (FINS), for the previous 12-months, not to exceed \$100,000 and not less than \$25,000.

(2) New carriers and those carriers having done business in their own name with the DOD for less than 3 years will be required to submit a Performance Bond based on areas of service they offer. Areas of service will be computed as both origins and destinations served.

1 state (including intrastate)—\$25,000;

2 to 3 states—\$50,000; and

4 or more states—\$100,000.

(3) Once a carrier has been doing business with the DOD for 3 years, their bond requirement will change from area of service to percent revenue.

c. Bulk fuel carriers and Perishable carriers will be required to submit a \$25,000 Performance Bond.

d. Local drayage and commercial zone carriers are exempt from the bond requirement.

e. If carrier has secured the Performance Bond as a result of qualifying under Ammunition and Explosive, classes A and B program or hazardous materials (other than ammunition and explosive, classes A and B ) program no additional Performance Bond is required.

#### 7. Safety.

a. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration. Department of Transportation, and, if it is an intrastate Motor carrier, with the appropriate state agency. The carrier further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees. The inspection may include in-transit surveillance of vehicles and drivers. The carrier agrees to provide evidence that fulfills the requirement set forth in 49 CFR Parts 390 through 396. Inspection of carrier equipment, drivers' records, route plans and inspection reports will be permitted during both the pickup and delivery of shipments and in coordination with local police or other authorities while in transit. Carrier also agrees to allow inspection of carrier records and individual driver qualification files. When requested, carrier agrees to provide adequate evidence of an active driver safety, security training and evaluation program. Upon request, the carrier agrees to furnish sufficient information to permit MTMC to verify or inspect carrier and driver records.

b. The carrier agrees to have in place a company-wide safety management program. Carrier safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives.

c. The carrier agrees to notify, within 24-hours, the consignor and consignee named by the Government Bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL number, shipping paper information, time and place of occurrence, and other pertinent accident details. When requested, carrier agrees to furnish MTMC a copy of accident reports submitted to the Department of Transportation of Form MCS 50-T (Property).

#### 8. Drivers Requirement.

- a. The carrier agrees to ensure that any driver used by the carrier to transport DOD freight possesses a valid commercial driver's license (in compliance with Federal Commercial Motor Vehicle Safety Act of 1986) issued by his or her state of domicile. Drivers must have, at a minimum, 1-year of driving experience driving equipment similar to that used to transport DOD freight, or have proof of graduation from an accredited trade truck Motor driving school, operating the aforementioned equipment.
- b. The carrier agrees to further ensure that driver carry a company picture identification card to verify affiliation with the carrier named on the Government Bill of Lading.
9. Equipment. The carrier is prohibited from using trip-leased equipment or drivers, except upon prior approval from MTMC. Leases of less than 30-days are considered trip-leases.
10. Shipment. The carrier agrees to provide, at no additional cost to the government, the status of any shipment within 24-hours after an inquiry is made. Further, the carrier agrees to not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.
11. Documentation.
  - a. The carrier agrees to accept GBLs and CBLs on which freight charges will be paid by the Government, and be bound by all terms stated on the SF-1103, Government Bill of Lading, regardless of the type of bill of lading tendered.
  - b. The carrier agrees to comply with the documentation prelude procedures in effect at Military Ocean Terminals or the installation, when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24-hours in advance of cargo delivery to the terminal.
12. Loss or damage. The carrier agrees to be liable for loss or damage to cargo in accordance with the provisions of 49 U.S.C. 11707 (the Carmack Amendment to the Interstate Commerce Act.) Carrier agrees to promptly settle uncontested claims for loss or damage.
13. Standard Tender of Service.
  - a. The carrier agrees to comply with the preparation and filing instructions in applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.
  - b. Carrier agrees to provide a street address where the company office is located in lieu of a post office box number. Carrier agrees to provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier agrees to also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue use of the carriers.
  - c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364-R), or the applicable MNC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances.
14. Rates.
  - a. Carrier agrees to transport Government shipments at the lowest tender rate specifically applicable to the department or agency involved.
  - b. Carrier agrees to publish guaranteed through rates for at least 30 days. These rates must be filed with MTMC, HQ, Eastern Area, ATTN: MTE-IN, Bayonne, New Jersey 07002-5302. The carrier must publish all rates, charges, and accessorial services on a MTMC approved form, and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)
15. Carrier Performance. Carrier agrees that carrier's equipment, performance and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the carrier for unsatisfactory service for any operating deficiency, noncompliance with the terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication of or assessment of unreasonable rates, charges, rules, descriptions classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15-1, and Army Regulations 55-355, DTMR. If a carrier is removed or disqualified for 6 months or more, it will have to be re-qualified.
16. General Provisions. The carrier agrees to possess a valid Standard Carrier Alpha Code (SCAC). When a company holding the appropriate authority has operating divisions, each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.
17. Terms of the Agreement.
  - a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocation of the carrier's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to Commander, HQMTMC, Attn: MTOP-QQ, 5611 Columbia Pike, Falls Church, VA 22041-5050.

20. Carrier Acknowledgment and Acceptance. The certifying carrier official agrees to ensure that the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

I, \_\_\_\_\_ (Typed Name and Title of Carrier Official) verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to \$10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to \$2,000 or imprisonment up to 5 years for each offense. Further, I understand the requirements of this Agreement and on behalf of: \_\_\_\_\_ (Typed Name of Carrier and MC Number) agree to comply with the terms and conditions contained herein.

\_\_\_\_\_ (Signature of Carrier Official and Title)

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

24-Hr Emergency Number: \_\_\_\_\_

Military Traffic Management Command

Acknowledgment/Acceptance Signature and Title: \_\_\_\_\_

Date Approved: \_\_\_\_\_